



## AGENDA COMMON COUNCIL

**Tuesday, September 18, 2012**

**To immediately follow the 6:30 p.m. Committee of the Whole meeting  
Common Council Chambers, 224 East Jefferson Street**

Mayor Robert Miller  
Robert Prailes, Alderman, 1<sup>st</sup> District  
Edward Johnson, Alderman, 1<sup>st</sup> District  
Peter Hintz, Alderman, 2<sup>nd</sup> District  
Ruth Dawidziak, Alderman, 2<sup>nd</sup> District  
Tom Vos, Council President and Alderman, 3<sup>rd</sup> District  
Steve Rauch, Alderman, 3<sup>rd</sup> District  
Katie Simenson, Alderman, 4<sup>th</sup> District  
Tom Preusker, Alderman, 4<sup>th</sup> District

1. Roll Call
2. Pledge of Allegiance to the Flag.
3. Citizen Comments.
4. Chamber of Commerce Representative.
5. Approval of the Common Council minutes for September 4, 2012. *(T. Preusker)*
6. Letters and Communications: None
7. Reports by Aldermanic Representatives and Department Heads.
8. Reports 1-2: *(R. Prailes)*
  - Report 1 – Police and Fire Commission minutes, March 15, 2012
  - Report 2 – Committee of the Whole minutes, September 4, 2012
9. Payment of Vouchers. *(E. Johnson)*
10. Licenses and Permits. *(P. Hintz)*
11. Appointments and Nominations: None
12. Public Hearings: None

13. **RESOLUTIONS:**

- A. Resolution 4572(23) to approve Task Order Ninety with Kapur & Associates for design and construction management with tee-turnarounds at Spring Brook Drive and Hidden Creek Lane in the amount of \$15,866. This item was discussed at the September 4, 2012 Committee of the Whole meeting. *(R. Dawidziak)*
- B. Resolution 4573(24) to approve Amendment One to the ChocolateFest Lease. This item was discussed at the September 4, 2012 Committee of the Whole meeting. *(T. Vos)*
- C. Resolution 4575(26) to consider authorizing the issuance and sale of up to \$7,722,769 Taxable Sewerage System Revenue Bonds, Series 2012, and providing for other details and covenants with respect thereto, and approval of related \$8,092,701 Financial Assistance Agreement. This item was discussed at tonight's Committee of the Whole meeting. *(S. Rauch)*

14. **ORDINANCES:**

None

15. **MOTIONS:**

None

16. **ADJOURNMENT** *(K. Simenson)*

*Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.*



## CITY OF BURLINGTON

**Administration Department**  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 – (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

<b>Common Council Agenda Item Number: 5</b>	<b>Date:</b> September 18, 2012
<b>Submitted By:</b> Beverly R. Gill, City Clerk	<b>Subject:</b> Meeting Minutes

**Details:**

Attached please find the minutes from September 4, 2012 Common Council meeting. Staff recommends approval of these minutes.

**Options & Alternatives:**

N/A

**Financial Remarks:**

None.

**Executive Action:**

Staff recommends that the Common Council approve these minutes at the September 18, 2012 Common Council meeting.



## CITY OF BURLINGTON

**Administration Department**  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 – (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

**City of Burlington  
Official Minutes  
Common Council  
Robert Miller, Mayor  
Beverly R. Gill, City Clerk  
September 4, 2012**

**1. CALL TO ORDER - ROLL CALL**

Mayor Bob Miller called the meeting to order at 7:31 p.m. starting with roll call. Aldermen present: Bob Prailes, Ed Johnson, Peter Hintz, Ruth Dawidziak, Tom Vos, Steve Rauch, Tom Preusker, Katie Simenson

Also present: City Attorney John Bjelajac, Police Lt. Mark Anderson, City Administrator Kevin Lahner, Fire Chief Dick Lodie, Assistant to the Administrator Megan Watkins, Treasurer Steve DeQuaker, Streets and Parks Supervisor Dan Jensen, Mr. Mike Timmers and Mr. Tom Foht of Kapur Engineering and a representative from Stark Construction

**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

Mayor Miller led the council, staff and audience in the Pledge of Allegiance

**3. CITIZEN COMMENTS**

**4. CHAMBER OF COMMERCE REPRESENTATIVE**

**5. APPROVAL OF COUNCIL MINUTES FOR AUGUST 21, 2012**

A motion was made by Preusker with a second by Johnson to approve the minutes from August 21, 2012. With all in favor, the motion carried.

**6. LETTERS AND COMMUNICATIONS**

None

**7. REPORTS BY ALDERMANIC REPRESENTATIVES AND DEPARTMENT HEADS**

Vos questioned the status of O'Reilly Automotive. Lahner replied representatives from O'Reilly have been in contact with both Kapur Engineering and the city's building inspector. It was thought they would be submitting plans by October.

**8. REPORTS 1-4**

A motion was made by Prailes with a second by Simenson to approve Reports 1-4. With all in favor, the motion carried.

**9. PAYMENT OF VOUCHERS**

A motion was made by Johnson with a second by Hintz to approve vouchers, pre-paid and reimbursements in the amount of \$329,352.80 Discussion: Simenson questioned the bill from Liquid Engineering Corporation. Lahner replied the invoice was for an interior inspection of one of the water tanks which is required by the Department of Natural Resources. Roll Call Aye: Prailes, Johnson, Hintz, Dawidziak, Vos, Rauch, Preusker, Simenson Nay: None Motion carried 8-0

**10. LICENSES AND PERMITS**

A motion was made by Hintz with a second by Dawidziak to approve licenses as presented. With all in favor, the motion carried.

**11. APPOINTMENTS AND NOMINATIONS**

None

**12. PUBLIC HEARING**

None

**13. RESOLUTIONS**

None

**14. ORDINANCES**

None

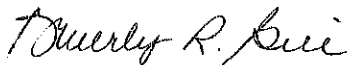
**15. MOTIONS**

**MOTION 12-749 "A MOTION TO CONSIDER APPROVING THE 2012 HALLOWEEN TRICK OR TREAT HOURS FOR WEDNESDAY, OCTOBER 31, 2012 FROM 5:30 P.M. TO 7:30 P.M."**

A motion was made by Dawidziak with a second by Hintz to approve the 2012 Halloween Trick or Treat Hours for Wednesday, October 31, 2012 from 5:30 p.m. to 7:30 p.m. Roll Call Aye: Prailes, Hintz, Dawidziak, Vos, Preusker Nay: Johnson, Rauch, Simenson Motion carried 5-3.

**16. ADJOURNMENT**

A motion was made by Vos with a second by Rauch to adjourn the meeting. With all in favor, the meeting adjourned at 7:37 p.m.



Beverly R. Gill  
City Clerk  
City of Burlington  
Racine and Walworth Counties



## CITY OF BURLINGTON

**Administration Department**  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 -- (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

<b>Common Council Agenda Item Number: 8</b>	<b>Date:</b> September 18, 2012
<b>Submitted By:</b> City Staff	<b>Subject:</b> Reports 1-2

**Details:**

Attached please find the following reports:

Report 1 – Police and Fire Commission minutes, March 15, 2012

Report 2 – Committee of the Whole minutes, September 4, 2012

**Options & Alternatives:**

N/A

**Financial Remarks:**

None.

**Executive Action:**

Staff recommends that the Council accept these reports at the September 18, 2012 Common Council meeting.

# **City of Burlington Police & Fire Commission**

## **Meeting Minutes**

**Burlington Fire Station  
165 West Washington Street  
Burlington, WI 53105**

**March 15<sup>th</sup>, 2012**

### **I.) Call to Order**

---

The meeting was called to order by Chairman Hotvedt at 4:48 PM

### **II.) Roll Call**

---

#### **Present:**

Jon Schultz, John Hotvedt, Joe Busch, Fire Chief Lodle

#### **Excused:**

Barb Kopack-Hill, Ron Patla, Police Chief Nimmer

### **III.) Public Comments**

---

None

### **IV.) Approval of Past Meeting's Minutes**

---

Minutes from the January 4<sup>th</sup>, 2012 and January 12<sup>th</sup>, 2012 meetings were presented to the Commission.

#### **Motion to approve the minutes of the past meetings**

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed Unanimously**

### **V.) Police Chief's Report and Police Department Business**

---

None

### **VI.) Fire Chief's Report and Fire Department Business**

---

#### **Convene in Closed Session**

**Motion to convene in closed session pursuant to Section 19.85 (1c), Wis. Stats. At 4:49 PM**

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed Unanimously**

#### **Reconvene in Open Session**

**Motion to reconvene in open session at 5:27 PM**

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed Unanimously**

**Motion to approve all candidates (Joel Gomez, Daniel Bessel and John McCourt) for inclusion on the Burlington Fire Department Volunteer Firefighter eligibility list**

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed Unanimously**

## **VII.) Police and Fire Commission Business**

---

None

## **VIII.) Adjournment**

---

### **Motion to adjourn the meeting at 5:28 PM**

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed unanimously**





## CITY OF BURLINGTON

**Department of Public Works**  
Streets, Parks and Water Department  
2200 S. Pine St., Burlington, WI, 53105  
(262) 539-3770 – (262) 539-3773 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

<b>Common Council Item Number: 13A</b>	<b>Date:</b> September 18, 2012
<b>Submitted By:</b> Dan Jensen, Public Works Supervisor	<b>Subject:</b> Resolution 4572(23) to consider Task Order #90 to provide civil engineering services for tee turnarounds at the end of Hidden Creek Lane and Spring Brook Drive.

**Details:**

The City of Burlington wishes to engage Kapur and Associates to produce plans and specifications; provide inspection and the contract administration for tee turnarounds at the end of Hidden Creek Lane and Spring Brook Dr. at their former intersections with Yahnke Rd. Currently there is no way for traffic to turn around at the end of these streets.

Staff recommends approval of this resolution.

**Options & Alternatives:**

Truck traffic that gets stuck on these streets will need to continue to back their way out of the dead ends and continue to cause damage to property.

**Financial Remarks:**

Project will be funded by TIF District 3 dollars. Acceptable TID expense per agreements. Current Budgeted Expenditure in TIF 3 is \$1,181,703. Year to Date Expenditures are \$882,805.46. Net favorable position of \$298,898. Balance after expenditure will be \$283,032. Expenditures for remainder of 2012 should come in under budget.

**Executive Action:**

This item was discussed at the September 4, 2012 Committee of the Whole meeting and is placed on the September 18, 2012 Common Council meeting for consideration.

Resolution No. 4572(23)  
Introduced by: Committee of the Whole

**A RESOLUTION APPROVING TASK ORDER NUMBER NINETY WITH KAPUR AND ASSOCIATES, INC. FOR DESIGN AND CONSTRUCTION MANAGEMENT FOR TEE TURNAROUNDS FOR HIDDEN CREEK LANE AND SPRING BROOK DRIVE, FOR THE NOT-TO-EXCEED AMOUNT OF \$15,866**

**WHEREAS**, the City of Burlington has entered into a master agreement for engineering services with Kapur and Associates, Inc.; and,

**WHEREAS**, the City has requested assistance to provide plans, specifications, conduct bid opening activities and oversight of construction, for tee turnarounds at the end of Hidden Creek Lane and Spring Brook Drive at their former intersections with Yahnke Road.

**WHEREAS**, said task order is for the not-to-exceed amount of \$15,866 and has been recommended for approval by the DPW Street and Parks Supervisor.

**NOW, THEREFORE, BE IT RESOLVED** by the Common Council of the City of Burlington that the Task Order Number 90 is hereby approved for the not-to-exceed amount of \$15,866.

**BE IT FURTHER RESOLVED** that the City Administrator is hereby authorized and directed to execute the Task Order Number Ninety on behalf of the City.

Introduced: September 4, 2012  
Adopted:

---

Robert Miller, Mayor

Attest:

---

Beverly R. Gill, City Clerk

City of Burlington  
Expenditure Approval Sheet  
Financial Remarks for Cover Sheet

Dollar Request      Department      Date  
\$15,866      DPW Streets      8/30/2012

100%

Department or Fund:      TIF 3 Fund

Account Name:      Consulting Services

Account to be charged:      463-565642-398

**BUDGET**      \$      1,181,703

Current YTD Expenditure:      \$      882,805

Balance YTD:      \$      298,898

**This Expenditure:**      \$      15,866

New Balance:      \$      283,032

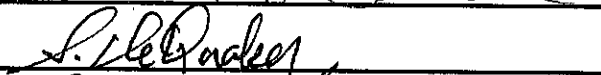
Financial Remarks: This account is anticipated to be at or below budget amount

**APPROVALS**


Dept. Head

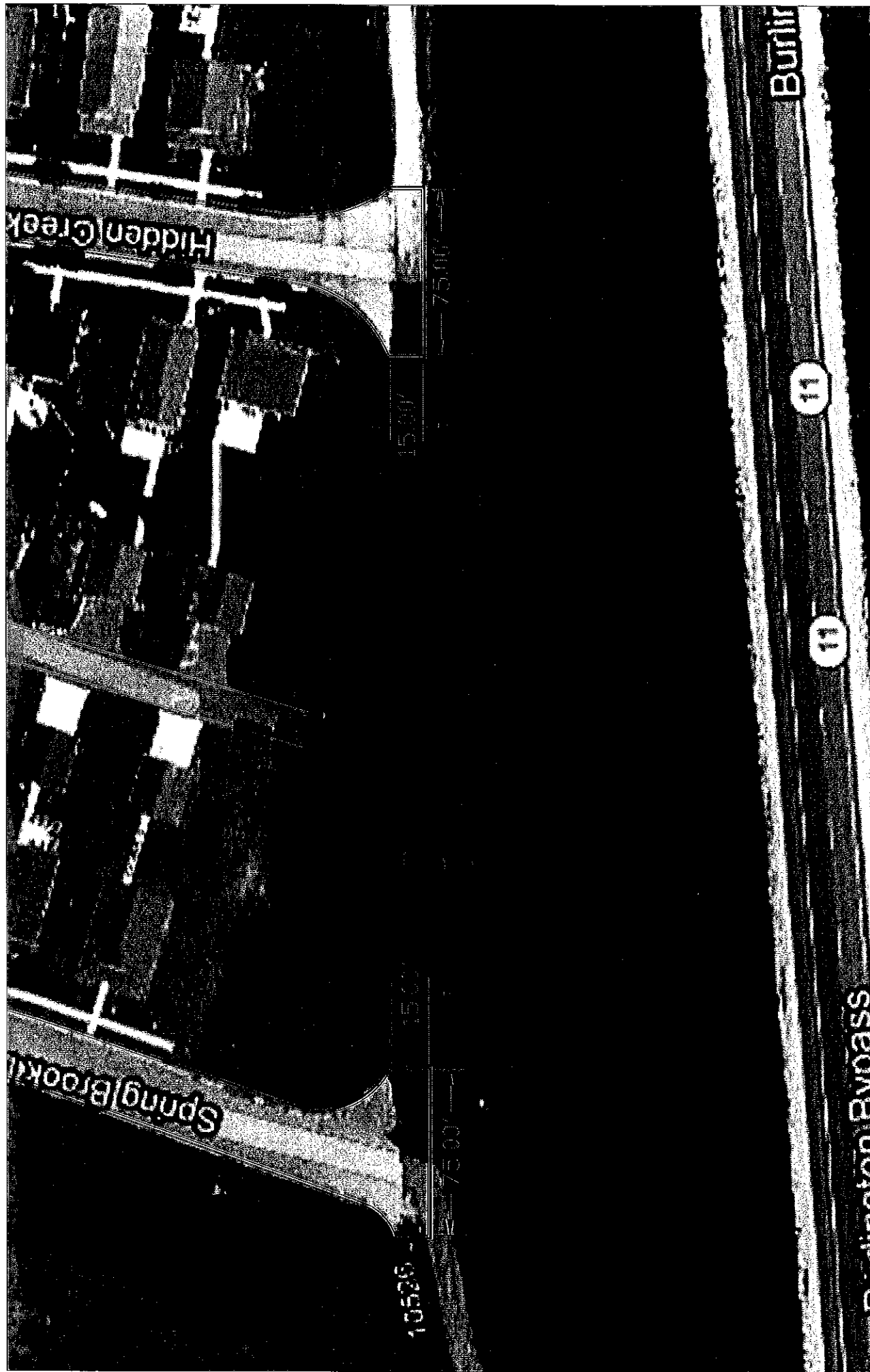


City Treasurer



City Administrator





**TASK ORDER NUMBER #90  
CIVIL ENGINEERING SERVICES**

This Task Order is made as of August 7, 2012 under the terms and conditions established in the MASTER AGREEMENT FOR ENGINEERING SERVICES, (the Agreement), between the **City of Burlington (Owner)** and **Kapur & Associates, Inc. (Engineer)**. This Task Order is made for the following purpose:

Provide civil engineering services for the design and construction management for the 'tee' turnarounds for Hidden Creek Lane and Spring Brook Drive in the City of Burlington.

**Section A. – Scope of Services**

Engineer shall perform the following Services:

**'Tee' turnaround design and construction oversight**

1. Provide plan and specifications for the construction of 'tee' turnarounds located at the end of Hidden Creek Lane and Spring Brook Drive. Both roadways terminated at former Yahnke Road intersections. Providing paved turnarounds will provide appropriate turnarounds for emergency and service vehicles as well as automobiles.
2. Provide bid opening and construction oversight during construction of both 'tee' turnarounds.

**Section B. – Schedule**

Engineer shall perform the Scope of Services and deliver the related Documents according to the following schedule:

1. Provide Preliminary Plans for review and comment within 30 days of Task Order approval or data availability.
2. Provide Final Plans and bid within 30 days of preliminary plan review comments.

**Section C. – Compensation**

In return for the performance of the foregoing obligations, Owner shall pay to Engineer an amount not-to-exceed Fifteen Thousand Eight Hundred Sixty-Six Dollars (\$15,866.00) payable according to the following terms:

A not-to-exceed amount based on the rates as listed in Attachment A of the Agreement, plus direct expenses. Cost plus services are limited to an agreed maximum figure unless amended.

Engineer may request a change to the billing hours if scope changes, beyond the control of the Engineer, resulting in an extension of the schedule or necessitates a change in personnel.

Compensation for Additional Services (if any) shall be paid by Owner to Engineer according to the hourly billing rates shown in Attachment A of the Agreement.

IN WITNESS WHEREOF, the Owner and Engineer have executed the Task Order.

Owner: City of Burlington

Engineer: Kapur & Associates, Inc.

By: \_\_\_\_\_

By: Thomas W. Foht

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Associate

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Kapur Associates, Inc.**

### Summary of Staff Hours and Labor Costs

for the

City of Burlington

[illegible]



## CITY OF BURLINGTON

### Administration Department

300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 - (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

<b>Common Council Item Number: 13B</b>	<b>Date:</b> September 18, 2012.
<b>Submitted By:</b> Kevin Lahner, City Administrator	<b>Subject:</b> Resolution 4573(24) to consider approving Amendment Number One to the ChocolateFest lease.

#### Details:

As part of the ChocolateFest lease approved in 2011, four buildings were to be razed including the former Public Works building, the salt shed, the paint building and the dog pound by July 31, 2012. The Public Works building was razed December 2011.

The ChocolateFest Committee has requested an extension to the deadline to December 31, 2012 as the crew to be used to raze the buildings are currently finalizing other construction projects. The committee has also requested to remove the kennels in the dog pound building but not raze the structure as there is a water source in the building.

#### Options & Alternatives:

The Council may choose to not extend the deadline and require the dog pound to be razed.

#### Financial Remarks:

There are no costs to the city associated with this item.

#### Executive Action:

This item was discussed at the September 4, 2012 Committee of the Whole meeting and is placed on the September 18, 2012 Common Council meeting for consideration.



**A RESOLUTION APPROVING AMENDMENT NUMBER ONE TO THE LEASE  
AGREEMENT WITH CHOCOLATE CITY FESTIVALS, INC.**

**WHEREAS** the City of Burlington and Chocolate City Festivals, Inc, entered into a Lease for land owned by the City of Burlington on July 18, 2011; and,

**WHEREAS** Chocolate City Festivals, Inc. has agreed to raze the buildings listed on Exhibit B of said lease commonly known as the "Salt Shed", "Paint Building" and "Dog Pound" by July 31, 2012; and,

**WHEREAS**, the ChocolateFest Committee has requested to extend the deadline to raze the Salt Shed and Paint Building to December 31, 2012; and,

**WHEREAS**, the ChocolateFest Committee has requested to not raze the Dog Pound building, remove the kennels from inside the building and use the building in the future.

**NOW, THEREFORE**, the Common Council of the City of Burlington and Chocolate City Festivals hereto agree Item 30, Special Provision: Tenant to Raze Certain Buildings, subsection c, item 2 shall be amended as follows:

2. The remaining two buildings shown on Exhibit B (commonly known as the "Salt Shed" and "Paint Building") shall be razed by December 31, 2012 and the "Dog Pound" shall remain in tact after kennels are removed to use in the future by the ChocolateFest Committee.

**BE IT FURTHER RESOLVED** that the Mayor is hereby authorized and directed to execute this Amendment to Lease on behalf of the City.

**BE IT FURTHER RESOLVED** that the Clerk is hereby directed to send a copy of this Amendment to Lease to Chocolate City Festivals, Inc. once it is fully executed by all parties.

Introduced: September 4, 2012  
Adopted:

\_\_\_\_\_  
Robert Miller, Mayor

Attest:

\_\_\_\_\_  
Beverly R. Gill, City Clerk

# EXHIBIT B

Scale: 1"=150'



LOCATION SKETCH  
NOT TO SCALE

## LEGEND

- 1 5/16" O.D. x 24" IRON PIPE SET WEIGHING 1.13 LBS/FT
- 1 5/16" O.D. IRON PIPE FOUND
- ⊕ CUT "X" SET
- △ MAG NAIL SET
- CONCRETE MONUMENT W/ BRASS CAP
- BUILDING SETBACK LINE
- 20' STREET
- 30' REAR YARD
- 10' SIDE YARD
- UNLESS A VARIANCE WAS GRANTED

(R) RECORD DISTANCE  
POB POINT OF BEGINNING

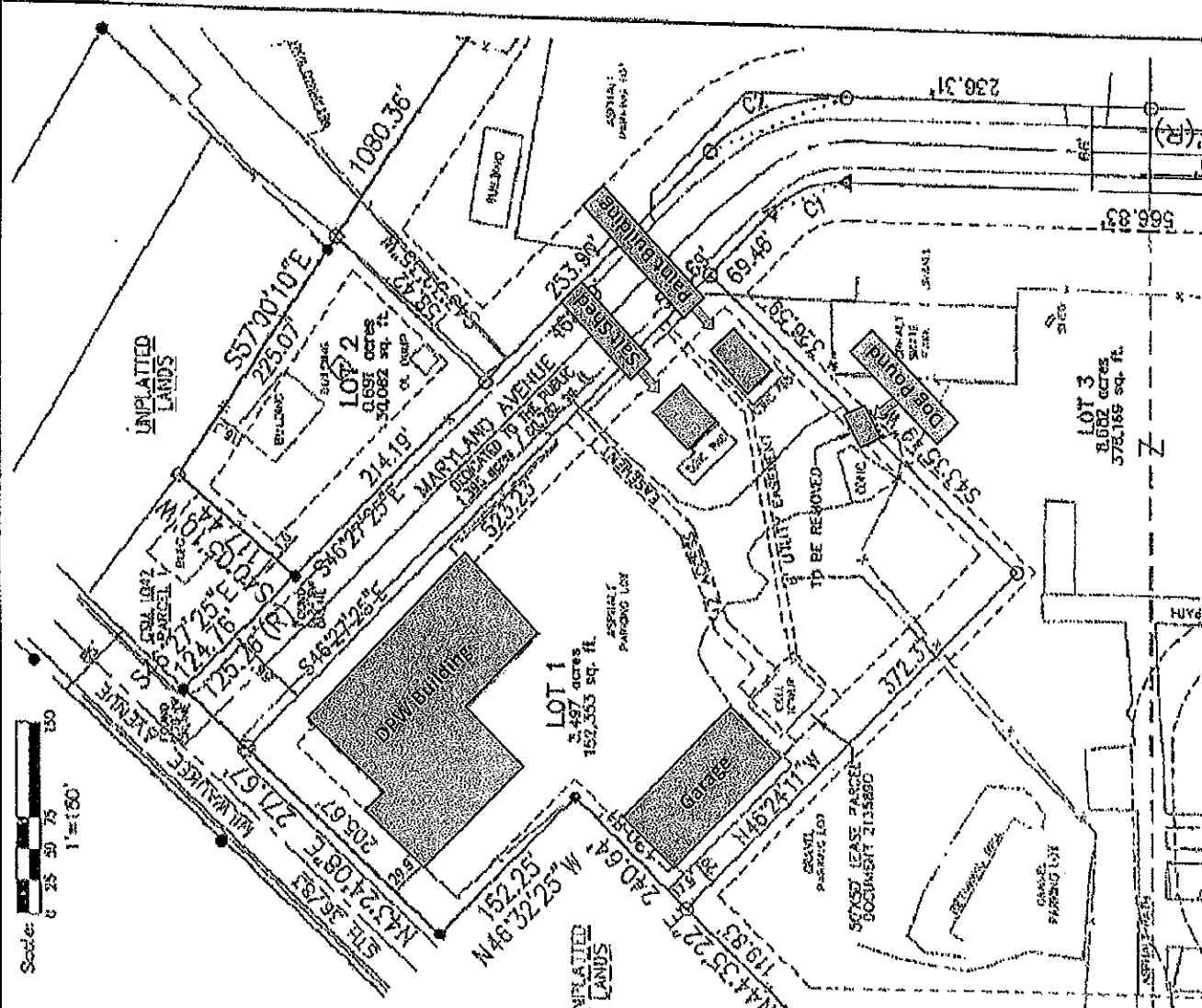
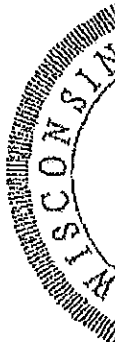
\* NOTE: THE PROPOSED ZONING FOR LOTS 1, 2 AND 3 IS THE M-1 DISTRICT. BUT LOT 1 TO REMAIN IN THE P-1 AND FW ZONING DISTRICTS. ALL REQUIRED SETBACKS IN THE P-1 DISTRICT ARE 40 FEET.

FLOODPLAIN ZONE A5  
100 YEAR FLOOD

FLOODPLAIN ZONE B  
100-500 YEAR FLOOD

\* AS PER PANEL 5503480001C  
DATED JAN. 15, 1982

\*\* FLOOD ELEVATION= 759



(Draft: 7/13/2011)

CHOCOLATEFEST LEASE AGREEMENT

This agreement ("Lease" and/or "Agreement") is made and entered into this 18<sup>th</sup> day of July, 2011, by and between the following parties:

- a) The CITY OF BURLINGTON, WISCONSIN, being a municipal corporation organized under the laws of the State of Wisconsin, with its City Hall located at 300 North Pine Street, Burlington, Wisconsin 53105 (hereinafter referred to as the "Landlord"); and
- b) CHOCOLATE CITY FESTIVALS, INC., being a Wisconsin 501(c)(4) not-for-profit corporation, with offices located at 565 Milwaukee Avenue, Suite 2C, Post Office Box 411, Burlington, Wisconsin 53105 (hereinafter referred to as "Tenant").

Introduction

Since 1987, Tenant has been organizing and conducting the community festival in Burlington, Wisconsin, known as "ChocolateFest". ChocolateFest is a significant and highly popular event attracting patrons not only from Burlington, but throughout Southeastern Wisconsin.

Tenant has traditionally located the site of ChocolateFest on lands owned by Landlord. Landlord is fully supportive of Tenant and its ChocolateFest festival, and through this Lease would like to provide a suitable location for Tenant to conduct ChocolateFest festivals for many years to come. Similarly, Tenant would like to perform certain services for Landlord, in

consideration of Tenant's use of Landlord's below-described lands for the future ChocolateFest events.

The parties are entering into this Agreement for such purposes.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE ABOVE-NAMED PARTIES HEREBY AGREE AS FOLLOWS:

1. Introduction is Correct. The foregoing "Introduction" is true and correct, and is hereby incorporated into this Agreement by reference.

2. Lease of Property. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, Lot 1 and Lot 3 described in Certified Survey Map ("CSM") No. 3012, which CSM was recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on the date of January 13, 2011, as Document No. 2274463. A photocopy of the recorded CSM No. 3012 is attached to this Lease as Exhibit A, along with an unrecorded copy that is more legible. Unless otherwise specifically referenced in this Lease, Lot 1 and Lot 3 of CSM No. 3012 shall collectively be referred to as the "Leased Premises" in this Lease.

3. Term. The term of this Lease shall be for a period of Thirty (30) Years, commencing on the date of 7-18-, 2011, and terminating at midnight on the date of 7-17-2041, 2041, unless sooner terminated under other provisions contained in this Lease.

4. Rent. For and as money rent for the Leased Premises, Tenant shall pay to Landlord One Dollar (\$1.00) for each year during the term of the Lease. This \$1.00 annual rent payment shall automatically be deemed timely paid by Tenant to Landlord during the course of the term of this Lease.

5. Forgiveness of Other Rent. Upon the execution of this Lease by the parties, the Tenant shall be relieved of any liability or responsibility to pay any other rent due Landlord under any other prior leases or prior agreements with Landlord. This release shall expressly include (i) the two years of rent originally due July 1, 2002 and July 1, 2003, but then postponed to July 1, 2015 and July 1, 2016, and (ii) two remaining rent payments under a prior lease, dated February 9, 1999 (the "Prior Lease"), in the amount of \$26,645.00.

6. Use of the Leased Premises: By Tenant. During the term of this Lease, Tenant shall use the Leased Premises for the purpose of conducting its ChocolateFest Festivals and any other purpose as described in this Lease document. Additionally, ChocolateFest Festivals may rent the existing city building identified as the "Garage" on Exhibit B to other parties as long as such use does not conflict with any city ordinances.

7. Road Closure Assistance from Landlord. Upon the request of Tenant, Landlord shall close off to the general public that portion of Maryland Avenue that is (i) located to the southeast of Milwaukee Avenue and (ii) adjacent to the Leased Premises. This closure to the general public of that portion of Maryland Avenue shall occur for a reasonable time period, as determined by Tenant and approved by Landlord, before, during, and after each ChocolateFest festival. While Maryland Avenue is so closed to the public, (i) Tenant's personnel, contractors, and agents, and (ii) Landlord's officers, employees, and agents may use the closed portion of Maryland Avenue for their own respective purposes.

8. Ingress/Egress Easement. An ingress/egress easement (the "Easement") was previously granted by Landlord to Tenant for vehicular and pedestrian traffic over a portion of what is now Lot 3 of the CSM. The Easement is shown on the CSM attached hereto as Exhibit

A. Landlord confirms this Easement for the benefit of Tenant. The Easement shall be closed to general vehicular traffic for the ChocolateFest festival each year, from the Monday before each Memorial Day through (and including) the Tuesday immediately following Memorial Day. Both Tenant and Landlord, however, may continue to use the Easement (when the Easement is so closed) in the same manner described in above Paragraph No. 7 for Tenant's/Landlord's use of the closed portion of Maryland Avenue. To the extent the terms and provisions of the original grant of the Easement vary from the terms and provisions of this Lease, the terms and provisions of this Lease shall control.

9. Alterations and Improvements. Tenant may, at its own cost and expense, remodel, alter and improve the Leased Premises. Prior to taking any such steps, however, Tenant shall first obtain Landlord's approval of any such remodeling, alterations or improvements being proposed by Tenant, which consent Landlord may grant or deny in its sole discretion. Any such remodeling, alterations or improvements shall (i) be done in a good workmanlike manner, in full compliance with all applicable governmental laws, rules and regulations, (ii) be fully and timely paid for by Tenant so that no construction liens (or any other type of an encumbrance) attaches to the Leased Premises, and (iii) be in compliance with the provisions of below Paragraph No. 10. All such remodeling, alterations or improvements so made by Tenant (except for Tenant's business fixtures, as hereinafter described) shall be the property of and owned by Landlord.

10. No Soil Disturbance. Tenant understands that portions of the Leased Premises were previously used by Landlord as a dump and/or waste site. Tenant shall accordingly not undertake, and/or allow any other person or entity to undertake, any activity that disturbs the

subsoil of the Leased Premises without the prior written approval of Landlord, which approval Landlord may grant or deny in its sole discretion.

11. Monitoring of DNR Wells. One or more environmental monitoring wells (the "Wells") required by the State of Wisconsin Department of Natural Resources exist on the Leased Premises. Tenant shall allow Landlord to continue to maintain and monitor such Wells on the Leased Premises.

12. Indemnification by Landlord for Any Prior Contamination. Landlord shall, and hereby does, indemnify and hold harmless the Tenant from and against all costs, damages, expenses (including, but not limited to, reasonable actual attorneys fees) and liability of any nature that may arise and/or pertain to Landlord's prior use of portions of the Leased Premises as a dump and/or waste site. This indemnification by Landlord shall not apply, however, in the event (i) Tenant fails to comply with the provisions of above Paragraph Numbers 10 and/or 11, and or below Paragraph Number 13, and (ii) such failure(s) by Tenant contributes to and/or causes, in whole or in part, the said cost, damage, expense, or liability in question.

13. No Further Contamination by Tenant. Tenant shall not undertake, and/or allow any other person or entity to undertake, any activity on the Leased Premises that results in (i) any violation of any environmental laws and/or (ii) causes any additional environmental contamination of the Leased Premises as defined in any applicable environmental laws.

14. Maintenance of Leased Premises. Tenant shall, at its own cost and expense:

- a) Keep the outside grounds of the Leased Premises (i) in a clean, neat, and sanitary condition, (ii) with an attractive and aesthetically-pleasing appearance, and (iii) free and clear of any litter, garbage, or debris.

- b) Only store or keep on the Leased Premises such items of personal property that are approved by Landlord as to type, quantity, and location of storage.
- c) Keep the buildings located on the Leased Premises (and used by Tenant) in a state of good condition and good repair.

15. Utilities. Tenant shall timely pay for the costs of all utilities providing service to the Leased Premises. This shall include, but not be limited to, the costs for water, sanitary sewer, natural gas, cable, electricity, and telephone.

16. Liability Insurance. Tenant shall, at its own cost and expense, procure and maintain with an insurance company licensed to do business in the State of Wisconsin a policy of public liability insurance providing coverage for any liability to any third persons for any property damage and any bodily injury, including death, arising out of Tenant's use of the Leased Premises (including, but not limited to, Tenant's conducting of the ChocolateFest festival on the Leased Premises). Such policy of liability insurance shall have a minimum policy limit for such coverage of at least One Million Dollars (\$1,000,000.00), and Landlord shall be named as an additional insured under such policy. During the term of this Lease Agreement, Tenant shall provide to Landlord a certificate of the insurer showing such coverage to be in effect. Landlord also has a policy of liability insurance for the lands owned by Landlord, including the Leased Premises. Landlord shall similarly take steps to have Tenant named as an additional insured on Landlord's said policy of liability insurance with respect to the Leased Premises.

17. Other Insurance. Landlord and Tenant shall, at their own respective cost and expense, procure and maintain such additional policies of insurance providing coverage for the Leased Premises and business operations as their own respective interests may appear. Landlord



shall, at its own cost and expense, procure and maintain a policy of insurance, in an amount equal to or exceeding the replacement value of any building(s) located on the Leased Premises, providing coverage against fire and all other similar perils and risks that may cause damage to the said building. Tenant shall, at its own cost and expense, procure and maintain a policy of insurance, in an amount equal to or exceeding the fair market value of the same, providing coverage against damage or loss to any vehicles, equipment, and/or other personal property stored by Tenant on the Leased Premises (with the prior consent of Landlord, pursuant to above Paragraph No. 14).

18. Waiver of Subrogation Rights. To the extent the same is required to effect a mutual waiver of any subrogation rights by an insurance carrier of either party, each of the undersigned parties releases the other party from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policies which the releasor carries with respect to the Leased Premises or any interest or property therein or thereon (whether or not such insurance is required to be carried under this Lease), but only to the extent that such loss is collected under said insurance policies. Such release is also conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect said policies or prejudice any right of the releasor to recover thereunder. Each party agrees that its insurance policies will include such a provision so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefore, so long as the party for whose benefit the clause or endorsement is obtained shall pay such extra cost. If extra cost shall be chargeable therefore, each party shall advise the other thereof of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

19. Assignment and Sublease. Tenant shall not assign this Lease Agreement or sublease the Leased Premises without the Landlord's prior written consent, which consent Landlord may grant or deny, in Landlord's sole discretion.

20. Insolvency. To the extent permitted by law, if any proceedings in bankruptcy or insolvency or for receivership are filed against Tenant, or if any sale of the leasehold interest hereby created, or any part thereof, should be made under any execution or other judicial process, or if the Tenant shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the Landlord may, at Landlord's option, terminate this Lease Agreement.

21. Surrender of Premises. Upon termination of this Lease, Tenant shall return the Leased Premises to Landlord in as good condition and repair as when delivered by Landlord, except for ordinary wear and tear. All alterations, additions, and improvements made to the Leased Premises shall remain and be the property of Landlord. All signs, trade, and decorative fixtures and other equipment and personal property owned by Tenant shall be removed from the Leased Premises by Tenant promptly on or prior to the termination date. Tenant shall repair any and all damage to the Leased Premises caused by removal of the equipment and property. Except in the case of (i) any delay arising due to circumstances beyond Tenant's reasonable control, and/or (ii) except if Landlord consents to the delay in question, any signs, trade, and decorative fixtures, equipment, and personal property not promptly removed by Tenant upon the termination of this Lease shall be considered abandoned and shall become the property of Landlord, at the option of Landlord.

22. Breach of Lease Agreement. If a party defaults in the performance of any of the terms, covenants, or conditions of this Lease Agreement, such other party may give to the defaulting party written notice of such default, and if the defaulting party does not cure such default within Ten (10) days after the giving of such written notice (or, if such default is of such a nature that it cannot be completely cured within such Ten (10) days, if the defaulting party does not commence such curing within such Ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then such other party may terminate this Lease Agreement by giving at least Thirty (30) days written notice to the defaulting party of its intention to do so, in which event this Lease Agreement shall terminate upon the date specified in such written notice. Such right of termination shall be in addition to any other remedy allowed by law. In addition to any such other remedies allowed by law, the defaulting party shall be liable to the other party for all costs incurred by such other party in enforcing its rights under the Lease Agreement, including reimbursement for actual and reasonable attorneys fees.

23. Notice. Any notice required to be given by either party to the other party shall be in writing, and shall be delivered to such other party either by (i) personal service, or by (ii) certified mail in a postpaid envelope addressed to such party at the address specified above in this Lease, or to such other address as may from time to time be designated in writing by such other party. Delivery by certified mail shall be deemed made and completed upon depositing the said postpaid envelope in the United States mail.

24. Right of First Refusal for Lot 3. During the term and/or renewal term(s) of this Lease, when and if Landlord elects to sell Lot 3 of the Leased Premises, then Tenant shall have the right to purchase Lot 3 under the same terms and conditions as those contained in any offer to

purchase which Landlord is proposing to accept. In the event Landlord does receive such an offer which Landlord wishes to accept, then Landlord shall deliver a copy of such offer to Tenant, and Tenant shall have a time period of Five (5) business days (Monday through Friday) thereafter to give a written notice to Landlord of Tenant's election to so purchase the said real property. Failure by the Tenant to give such a written notice to Landlord (electing to purchase the real property) shall constitute an automatic waiver and deletion of this present paragraph from the Lease. The remaining terms and provisions of this Lease, however, shall continue in full force and effect (except as provided otherwise in below Paragraph No. 26 with respect to Lot 1).

25. Governing Law. This Lease Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin. Venue for any legal action pertaining to and/or arising under this Lease shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

26. Removal of Lot 1 From the Leased Premises. Landlord may, at any time, remove part and/or all of Lot 1 from the Leased Premises. In the event Landlord wishes to take such steps, Landlord shall deliver a written notice to Tenant:

- a) Specifying the part (or all) of Lot 1 being removed from the Leased Premises; and
- b) Stating the effective date of such removal, which date shall be at least thirty (30) days after the date of the delivery of the said written notice to Tenant.

Landlord shall not remove part and/or all of Lot 1 from the Leased Premises, however, with an effective date of removal that is in the range of the calendar dates of March 1 through June 15, so that any such removal of part or all of Lot 1 from the Leased Premises will minimize

any disruption that such removal may have on Tenant conducting its ChocolateFest festival on the Leased Premises.

27. Other Use of Leased Premises by Landlord and Tenant. Landlord and Tenant are entering into this Lease to allow Tenant to conduct its ChocolateFest festivals on the Leased Premises during the time period of each year (during the term of this Lease) that is described in above Paragraph No. 6. During the other remaining time periods of each year, both Landlord and Tenant may use, and/or allow other persons or entities to use, the Leased Premises for other events ("Other Event" and/or "Other Events") that are approved by both Landlord and Tenant. The use of the Leased Premises by Landlord and/or Tenant for Other Events, however, shall require the prior written approval of the other party to this Lease for each such Other Event, which approval such other party shall not unreasonably withhold. When and if such Other Events are held on the Leased Premises:

- a) The party to this Lease holding or allowing the Other Event shall, and hereby does, indemnify and hold harmless the other party to this Lease from and against any costs, damages, expenses (including, but not limited to, reasonable actual attorneys fees) and liability that may arise as a result of another person(s) or entity(ies) using the Leased Premises for the purpose of conducting Other Events on the Leased Premises.
- b) With respect to Other Events held or authorized by Landlord, Landlord shall reimburse Tenant for the cost of any utility services used by Landlord and/or the said other person(s)/entity(ies) while conducting the Other Events on the Leased Premises, to the extent that Tenant pays such utility costs so incurred.

- c) As between Tenant and Landlord, the party to this Lease holding or authorizing the said Other Events shall be responsible for keeping the Leased Premises in a good, clean condition, as described in above Paragraph No. 14(a), with respect to the use of the Leased Premises for Other Events.
- d) Landlord and Tenant shall coordinate with each other with respect to the dates that Other Events are held on the Leased Premises. In the event of any conflicting dates for proposed Other Events, however, Landlord shall determine which Other Event is held on the Leased Premises on which date.
- e) To the extent that Landlord and/or Tenant use a written agreement ("Third Party Agreement") with a third party that will be conducting an Other Event on the Leased Premises, such Third Party Agreement shall first be approved in writing by the other party to this Lease.

28. Joint Access to Leased Property. During the term of this Lease, both Landlord and Tenant (and their respective officers, employees, contractors, consultants, and agents) shall have access to the Leased Premises for their own respective purposes. Both Landlord and Tenant, however, shall conduct themselves in a manner which will not unreasonably interfere with the use of the Leased Premises by either Landlord or Tenant as allowed under this Lease.

29. Prior Agreements Superseded. All prior agreements and/or understandings, whether written or oral, that have previously been entered into by and between Landlord and Tenant are null and void, and are superseded by the terms and provisions contained in this Lease. The Easement described in above Paragraph No. 8, however, shall continue to be effective and in

existence, except to the extent the original document granting the Easement is modified by this Lease (as described in above Paragraph No. 8).

30. Special Provision: Tenant to Raze Certain Buildings. Tenant shall raze the Four (4) buildings located on the Leased Premises that are described in the diagram attached hereto as Exhibit B. With respect to the razing of the four buildings (collectively, the "Demolition Project", unless a certain building is otherwise specifically referred to):

- a) As between Tenant and Landlord, the Demolition Project shall be done at Tenant's cost and expense, except as otherwise specifically described in the below subparagraph (d) of this Paragraph No. 30.
- b) The work ("Work") for the Demolition Project shall be performed by a qualified contractor(s) approved in advance by both Tenant and Landlord, with the said contractor(s) having the experience, personnel, equipment, and insurance coverage appropriate for the Work.
- c) The contractor(s) shall perform the Work for the Demolition Project in compliance with all applicable laws and within the following time frames:
  1. The building labeled "DPW Building" on Exhibit B shall be razed by December 31, 2011.
  2. The remaining three buildings shown on Exhibit B (commonly known as the "Salt Shed", "Paint Building", and "Dog Pound") shall be razed by July 31, 2012.
- d) The Landlord shall, at its own cost and expense, and with respect to the razing of each of the four buildings described in Exhibit B:

1. Be responsible for the disposal of any hazardous material found on the Work site. (This shall include, but not be limited to, any asbestos, mold, contaminated soils, contaminated building materials, and/or contaminated concrete or asphalt.)
  2. Have a pre-demolition hazardous material inspection performed, with asbestos abatement undertaken as may be necessary and appropriate.
- e) Tenant shall coordinate the hiring of the contractor(s) to perform the Work for the Demolition Project such that, if desired by Landlord, a contractor will perform the Work for the Demolition Project (including part or all of the work to be done by Landlord, as described in above subparagraph (d)), and with Landlord and Tenant then each paying the contractor(s) for the cost of their own respective portion of the Work performed by the contractor.
  - f) Landlord shall pay (and/or waive) any permit fees for the Demolition Project that may normally be required by Landlord as a condition precedent for a contractor to conduct demolition work in the City of Burlington.

30. Special Provision: Cellular Tower. A cellular tower and related equipment and fixtures (collectively, the "Cell Tower") exists on the Leased Premises. This Cell Tower, however, is not part of Tenant's lease interests under this Lease, and shall solely and exclusively be the lease interest or property interest of Landlord. Tenant shall:

- a) Not interfere, or allow any person or entity to interfere, with the use and operations of the Cell Tower by the owner and/or operator of the Cell Tower.



- b) All money payments paid by the owner of the Cell Tower shall be the property of Landlord and not Tenant.
- c) Tenant shall allow Landlord and/or the owner and/or operator of the Cell Tower (and their respective officers, employees, contractors, consultants, or agents) full access, at all times, to and through the Leased Premises to (i) inspect, maintain, repair, and/or replace the Cell Tower, and/or (ii) add more equipment, fixtures, facilities, buildings, and/or additional towers to that area of the Leased Premises on which the present Cell Tower is located (or at such other area of the Leased Premises that may be designated by Landlord).
- d) Tenant shall not otherwise interfere, and/or allow any person or entity to interfere, with the present and/or future contractual rights of the Landlord and/or the owner/operator of the Cell Tower located on the Leased Premises.
- e) Landlord may, in its sole discretion, enter into agreements with other cellular tower owners and operators for the construction and operation of other cellular/communication towers on the Leased Premises, provided that the installation of any such additional towers and related facilities will not unreasonably interfere with Tenant's use of the Leased Premises for the conducting of its ChocolateFest festivals.

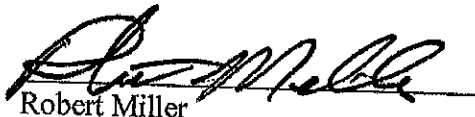
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the date first written above.

LANDLORD:

TENANT:

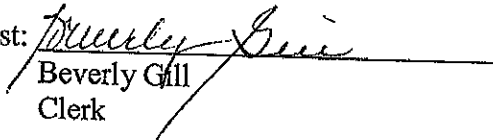
City of Burlington, Wisconsin

By:



Robert Miller  
Mayor

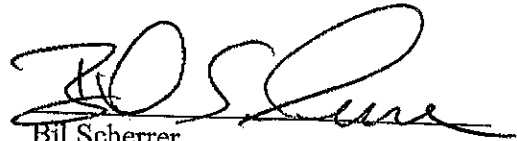
Attest:



Beverly Gill  
Clerk

Chocolate City Festivals, Inc.

By:



Bill Scherrer  
President

Attest:



Tim McCourt  
Secretary



## CITY OF BURLINGTON

**Administration Department**  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 – (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

<b>Committee of the Whole Item Number: 6</b>	<b>Date:</b> September 18, 2012
<b>Submitted By:</b> Kevin Lahner, City Administrator	<b>Subject:</b> Resolution 4575(26) to consider authorizing the issuance and sale of taxable water system revenue bonds for the Waste Water Treatment Plant phase 2 upgrades.

**Details:**

The City has received an offer of financial assistance in the form of a 20-year low interest loan from the Wisconsin Environmental Improvement Fund. This loan will be used to finance Phase 2 of the Wastewater Treatment Plant expansion primarily focusing on equipment upgrades and modifications. This loan is in the amount of \$8,092,701 with \$369,932 in principal forgiveness. Net loan amount is \$7,722,769 plus loan closing costs.

Interest and Principal on the bonds shall be payable starting May 1, 2013 and semiannually thereafter on May 1<sup>st</sup> and November 1<sup>st</sup> each year through 2032. Annual debt service will be approximately \$500,000 per year average for 20 years. The fixed interest rate on this specific loan is 2.625%.

Per State Statute, the Council is also required to appoint an authorized representative to file applications for the State of Wisconsin Environmental Improvement Fund. This fund provides state financial assistance for improvements to the Waste Water facilities in relation to the equipment upgrades as a low interest loan program. Past Council procedure has been to appoint the Utility Director to this position. Since this position is currently vacant, Kevin Lahner, City Administrator should be appointed, to act as the City's representative and file all necessary applications for the Clean Water Fund Loan.

**Options & Alternatives:**

This is a necessary step in the process of applying for funds from the Clean Water Fund Loan. Failure to do so would require the need to secure money elsewhere to fund the project.

**Financial Remarks:**

The interest rate for this loan is at a fixed rate of 2.625%. The last CWF loan was at 2.569%. Funding for the debt service of this loan will be through Sewer usage charges.

**Executive Action:**

This item is for discussion at the September 18, 2010 Committee of the Whole meeting. Due to the timeliness of this issue, it has been placed on tonight's Common Council for consideration.

RESOLUTION NO. 4575(26)

RESOLUTION AUTHORIZING THE ISSUANCE AND  
SALE OF UP TO \$7,722,769 TAXABLE SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2012,  
AND PROVIDING FOR OTHER DETAILS AND  
COVENANTS WITH RESPECT THERETO, AND APPROVING  
RELATED \$8,092,701 FINANCIAL ASSISTANCE AGREEMENT

WHEREAS, the City of Burlington, Racine and Walworth Counties, Wisconsin (the "Municipality") owns and operates a sewerage system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, pursuant to a resolution adopted on February 5, 2008 (the "2008 Resolution"), the Municipality has heretofore issued its Taxable Sewerage System Revenue Bonds, Series 2008, dated February 27, 2008 (the "2008 Bonds"), which 2008 Bonds are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on July 15, 2008 (the "2008B Resolution"), the Municipality has heretofore issued its Taxable Sewerage System Revenue Bonds, Series 2008B, dated July 23, 2008 (the "2008B Bonds"), which 2008B Bonds are payable from the income and revenues of the System; and

WHEREAS, the 2008 Bonds and the 2008B Bonds shall collectively be referred to as the "Prior Bonds"; and

WHEREAS, the 2008 Resolution and the 2008B Resolution shall collectively be referred to as the "Prior Resolutions"; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Clean Water Fund Program Project No. 5096-09 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. S-2009-0589 and dated September 8, 2009 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell sewerage system revenue bonds of the Municipality payable solely from the revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, due to certain provisions of the Internal Revenue Code of 1986, as amended, it is necessary to issue such bonds on a taxable basis, and the State of Wisconsin Clean Water Fund Program has granted the Municipality a variance to allow such bonds to be issued on a taxable basis; and

WHEREAS, the Prior Resolutions permit the issuance of additional bonds on a parity with the Prior Bonds upon certain conditions, and those conditions have been met; and

WHEREAS, other than the Prior Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Section 66.0621, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" means the \$7,722,769 Taxable Sewerage System Revenue Bonds, Series 2012, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending on each May 1;
- (e) "Current Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but shall exclude depreciation, debt service, tax equivalents and capital expenditures;
- (f) "Debt Service Fund" means the Debt Service Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;
- (g) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;
- (h) "Fiscal Year" means the twelve-month period ending on each December 31;
- (i) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;
- (j) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from sewerage charges imposed by the Municipality, all payments to the Municipality under any wastewater treatment service agreements between the Municipality and

any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the Project;

(k) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;

(l) "Municipality" means the City of Burlington, Racine and Walworth Counties, Wisconsin;

(m) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(n) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(o) "Prior Bonds" means the 2008 Bonds and the 2008B Bonds, collectively;

(p) "Prior Resolutions" means the 2008 Resolution and the 2008B Resolution, collectively;

(q) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(r) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(s) "System" means the entire sewerage system of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, transmission, treatment and disposal of domestic and industrial sewerage and waste, including all improvements and extensions thereto made by the Municipality while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such sewerage system and including all appurtenances, contracts, leases, franchises, and other intangibles;

(t) "2008 Bonds" means the Municipality's Taxable Sewerage System Revenue Bonds, Series 2008, dated February 27, 2008;

(u) "2008 Resolution" means a resolution adopted by the Governing Body on February 5, 2008 authorizing the issuance of the 2008 Bonds;

(v) "2008B Bonds" means the Municipality's Taxable Sewerage System Revenue Bonds, Series 2008B, dated July 23, 2008; and

(w) "2008B Resolution" means a resolution adopted by the Governing Body on July 15, 2008 authorizing the issuance of the 2008B Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$7,722,769; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Clean Water Fund Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Taxable Sewerage System Revenue Bonds, Series 2012" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 2.625% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on May 1, 2013 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

The schedule of maturities of the Bonds is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service

Fund hereinafter created and established, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the Prior Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the Prior Bonds, the Bonds and Parity Bonds, certain funds of the System which were created and established by a Resolution adopted on May 13, 1991 are hereby continued and shall be used solely for the following respective purposes:

- (a) Revenue Fund, into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.
- (b) Operation and Maintenance Fund, which shall be used for the payment of Current Expenses.
- (c) Debt Service Fund, which shall be used for the payment of the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and Parity Bonds as the same becomes due.
- (d) Surplus Fund, which shall first be used whenever necessary to pay principal of, premium, if any, or interest on the Prior Bonds, the Bonds and Parity Bonds when the Debt Service Fund shall be insufficient for such purpose, and thereafter shall be disbursed as follows: (i) at any time, to remedy any deficiency in any of the Funds provided in this Section 6 hereof; and (ii) money thereafter remaining in the Surplus Fund at the end of any Fiscal Year may be transferred to any of the funds or accounts created herein or to reimburse the general fund of the Municipality for advances made by the Municipality to the System.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the Prior Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the Prior Bonds, the Bonds and any Parity Bonds



coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source); and

- (c) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (c) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the Prior Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34, Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes. The other funds herein created (except the Sewerage System CWFPP Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing sewerage services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the Prior Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the

Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the Prior Bonds as to the pledge of revenues of the System. No bonds or obligations payable out of the revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Clean Water Fund Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Clean Water Fund Program for the purchase price of up to \$7,722,769 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Sewerage System CWFPP Project Fund." The Sewerage System CWFPP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Sewerage System CWFPP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality

of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 16. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 14, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 17. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Clean Water Fund Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Clean Water Fund Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 18. Conflicting Resolutions. All ordinances, resolutions (other than the Prior Resolutions), or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control as long as any of the respective Prior Bonds are outstanding.

Passed: September 18, 2012

Approved: September 18, 2012

---

Robert Miller  
Mayor

Attest:

---

Beverly R. Gill  
City Clerk

EXHIBIT A

(Form of Municipal Obligation)

REGISTERED  
NO. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF WISCONSIN  
RACINE AND WALWORTH COUNTIES  
CITY OF BURLINGTON

REGISTERED  
\$ \_\_\_\_\_

TAXABLE SEWERAGE SYSTEM REVENUE BOND, SERIES 2012

Final  
Maturity Date

May 1, 2032

Date of  
Original Issue

\_\_\_\_\_, 20\_\_

REGISTERED OWNER: STATE OF WISCONSIN CLEAN WATER FUND PROGRAM

FOR VALUE RECEIVED the City of Burlington, Racine and Walworth Counties, Wisconsin (the "Municipality") hereby acknowledges itself to owe and promises to pay to the registered owner shown above, or registered assigns, solely from the fund hereinafter specified, the principal sum of an amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) (but only so much as shall have been drawn hereunder, as provided below) on May 1 of each year commencing May 1, 2014 until the final maturity date written above, together with interest thereon (but only on amounts as shall have been drawn hereunder, as provided below) from the dates the amounts are drawn hereunder or the most recent payment date to which interest has been paid, at the rate of 2.625% per annum, calculated on the basis of a 360-day year made up of twelve 30-day months, such interest being payable on the first days of May and November of each year, with the first interest being payable on May 1, 2013.

The principal amount evidenced by this Bond may be drawn upon by the Municipality in accordance with the Financial Assistance Agreement entered by and between the Municipality and the State of Wisconsin by the Department of Natural Resources and the Department of Administration including capitalized interest transferred (if any). The principal amounts so drawn shall be repaid in installments on May 1 of each year commencing on May 1, 2014 in an amount equal to an amount which when amortized over the remaining term of this Bond plus current payments of interest (but only on amounts drawn hereunder) at Two and 625/1000ths percent (2.625%) per annum shall result in equal annual payments of the total of principal and the semiannual payments of interest. The State of Wisconsin Department of Administration shall record such draws and corresponding principal repayment schedule on a cumulative basis in the format shown on the attached Schedule A.

Both principal and interest hereon are hereby made payable to the registered owner in lawful money of the United States of America. On the final maturity date, principal of this Bond shall be payable only upon presentation and surrender of this Bond at the office of the Municipal Treasurer. Principal hereof (except the final maturity) and interest hereon shall be payable by electronic transfer or by check or draft dated on or before the applicable payment date and mailed from the office of the Municipal Treasurer to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month next preceding such interest payment date.

The Bonds shall not be redeemable prior to their maturity, except with the consent of the registered owner.

This Bond is transferable only upon the books of the Municipality kept for that purpose at the office of the Municipal Treasurer, by the registered owner in person or its duly authorized attorney, upon surrender of this Bond, together with a written instrument of transfer (which may be endorsed hereon) satisfactory to the Municipal Treasurer, duly executed by the registered owner or its duly authorized attorney. Thereupon a replacement Bond shall be issued to the transferee in exchange therefor. The Municipality may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or interest hereof and for all other purposes. This Bond is issuable solely as a negotiable, fully-registered bond, without coupons, and in denominations of \$0.01 or any integral multiple thereof.

This Bond is issued for the purpose of providing for the payment of the cost of constructing improvements to the Sewerage System of the Municipality, pursuant to Article XI, Section 3, of the Wisconsin Constitution, Section 66.0621, Wisconsin Statutes, and a resolution adopted September 18, 2012, and entitled: "Resolution Authorizing the Issuance and Sale of Up to \$7,722,769 Taxable Sewerage System Revenue Bonds, Series 2012, and Providing for Other Details and Covenants With Respect Thereto, and Approving Related \$8,092,701 Financial Assistance Agreement" and is payable only from the income and revenues derived from the operation of the Sewerage System of the Municipality (the "Utility"). The Bonds are issued on a parity with the Municipality's Taxable Sewerage System Revenue Bonds, Series 2008, dated February 27, 2008 and Taxable Sewerage System Revenue Bonds, Series 2008B, dated July 23, 2008, as to the pledge of income and revenues of the Utility. This Bond does not constitute an indebtedness of said Municipality within the meaning of any constitutional or statutory debt limitation or provision.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; and that sufficient of the income and revenue to be received by said Municipality from the operation of its Utility has been pledged to and will be set aside into a special fund for the payment of the principal of and interest on this Bond.

IN WITNESS WHEREOF, the Municipality has caused this Bond to be signed by the signatures of its Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

CITY OF BURLINGTON,  
WISCONSIN

(SEAL)

By: \_\_\_\_\_  
Robert Miller  
Mayor

By: \_\_\_\_\_  
Beverly R. Gill  
City Clerk



(Form of Assignment)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Please print or typewrite name and address, including zip code, of Assignee)

Please insert Social Security or other identifying number of Assignee

\_\_\_\_\_

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_

Attorney to transfer said Bond on the books kept for the registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature of this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature(s) guaranteed by

\_\_\_\_\_

SCHEDULE A

\$7,722,769

CITY OF BURLINGTON, WISCONSIN  
TAXABLE SEWERAGE SYSTEM REVENUE BONDS, SERIES 2012

<u>Amount of Disburse- ment</u>	<u>Date of Disbursement</u>	<u>Series of Bonds</u>	<u>Principal Repaid</u>	<u>Principal Balance</u>

SCHEDULE A (continued)

PRINCIPAL REPAYMENT SCHEDULE

<u>Date</u>	<u>Principal Amount</u>
May 1, 2014	\$318,695.52
May 1, 2015	327,061.28
May 1, 2016	335,646.64
May 1, 2017	344,457.36
May 1, 2018	353,499.37
May 1, 2019	362,778.72
May 1, 2020	372,301.67
May 1, 2021	382,074.58
May 1, 2022	392,104.04
May 1, 2023	402,396.77
May 1, 2024	412,959.69
May 1, 2025	423,799.88
May 1, 2026	434,924.63
May 1, 2027	446,341.40
May 1, 2028	458,057.86
May 1, 2029	470,081.88
May 1, 2030	482,421.53
May 1, 2031	495,085.10
May 1, 2032	508,081.08